Notice pursuant to Article 19(3) of Council Regulation No 17 concerning an application for negative clearance or exemption under Article 85(3) of the EC Treaty

Case No IV/E-2/36.949 — KGS

(Text with EEA relevance)

Introduction

1. On 3 March 1998 the Commission was notified pursuant to Article 4 of Council Regulation No 17 of various agreements to the effect that Cerestar Deutschland GmbH, Krefeld, Merck KGaA, Darmstadt, and BASF AG, Ludwigshafen had set up a joint venture (JV) for the biotechnological production of 2-keto-L-gulonic acid (KGA), an intermediate product in the manufacture of vitamin C from sorbitol.

2. On 17 March 1998 the Commission published a notice concerning the aforementioned notification, in which it explained that on preliminary examination it had found that the joint venture could fall within the scope of Regulation No 17. Interested third parties were invited to submit their observations on the proposed operation. The Commission has received no comments.

The parties

3. Cerestar Deutschland is controlled by Montedison Spa, Milan through Eridania Béghin-Say SA Paris (EBS). The Montedison group's consolidated turnover in 1996 was approximately ECU 12,331 billion. Cerestar manufactures starch and starch derivatives.

4. Merck is a listed company operating worldwide, which had a consolidated group turnover in 1996 of approximately ECU 3,495 billion. Merck's business is primarily in pharmaceuticals, laboratory products and special chemicals.

5. BASF is a listed company operating worldwide, which had a consolidated group turnover in 1996 of approximately ECU 24,671 billion. It operates in the manufacture, processing and sales of chemical, chemico-technical and metallurgical products of all kinds.

Nature of the cooperation

6. The parties have set up the KGS Keto-Gulonsäure Produktionsgesellschaft mbH (Keto-Gulonic Acid Production Company), with its registered office in Krefeld. The joint venture, in which the three partners have an equal share, will build and operate a plant for the manufacture of KGA. The production plant will be erected on Cerestar's site at Krefeld, where it will be integrated with the existing works. Cerestar will supply all services necessary for the operation of the plant under a site service contract. The manufacturing process for converting sorbitol into KGA will be licensed to the JV by Cerestar under a technology-licensing contract.

The sorbitol required for the production of KGA comes from Cerestar's sorbitol production plant. Legally speaking, the sorbitol is supplied under separate contracts to Merck and to BASF Health & Nutrition A/S, Ballerup, Denmark (BHN), a wholly owned subsidiary of BASF. BHN and Merck obtain the sorbitol exclusively from Cerestar, which for its part is obliged to supply the raw material. The price for the sorbitol which Merck and BHN have to pay Cerestar depends on their (different) selling prices for vitamin C. Merck and BHN make the sorbitol obtained from Cerestar available to the JV, which manufactures KGA from it for Merck and BHN on commission. Independently of each other, Merck and BHN carry out the processing of KGA into vitamin C, and the ensuing sales.

7. The three partners will also cooperate in the field of research and development. This work relates to the conversion of starch, sorbitol and other starch derivatives into KGA and vitamin C. The aim is, first, to optimise the KGA production process and then, building on this, to develop an optimum process for manufacturing vitamin C from starch or starch derivatives. The field of research extends beyond the sorbitol-to-KGA stage of production, since any changes in that stage, even if they alter the specification of the KGA only slightly, affect the KGA-to-vitamin C production stage. During the life

of the joint venture (at least 15 years), the partners rule out any independent parallel research or cooperative research with third parties in the field covered by the agreement. If one of the partners withdraws from the joint venture, it may not use any know-how or patents obtained, or any know-how and rights contributed by the partners, during the remaining life of the joint venture and at least for a period of 15 years from the entry into force of the joint venture agreement.

The relevant market

8. KGA is not traded as a separate product on the market but merely constitutes a necessary intermediate product in the production of vitamin C from sorbitol. There is no supply of or demand for KGA. The market for vitamin C (ascorbic acid) should therefore be regarded as the relevant product market. Vitamin C is primarily required in the food, pharmaceuticals and animal foodstuffs industries. It is not interchangeable with other products and therefore constitutes a separate market.

9. The relevant geographic market for vitamin C is the world market. Since the price of vitamin C is high in proportion to its volume, transport costs do not form a market barrier.

10. On the European market for vitamin C, Merck and BASF had a combined market share of 18% in 1996. The market leader is Hoffmann-La Roche, with a market share of 40%. Cerestar does not operate on this market.

11. The customers for vitamin C are a large number of firms in the pharmaceuticals, food (especially meat), beverages and food additives industries.

12. Upstream of the vitamin C market is the polyols (polyvalent alcohols) sector. Polyols are used primarily in foodstuffs (especially in confectionery) and in the production of pharmaceuticals and cosmetics. The polyols sorbitol and maltitol form a separate submarket, since their prices differ significantly from those for other polyols. In the production of foodstuffs, tobacco products, toothpaste and cosmetics, they can be replaced by glycerol. Given existing market regulations, the relevant geographic market for sorbitol/maltitol is the European market. In the case of glycerol, a worldwide market should be assumed.

Cerestar has 39% of the European market for sorbitol/maltitol. Merck and BASF do not operate on that market. Merck produces sorbitol essentially for its own vitamin C manufacture, while BASF does not produce it at all.

The market leader on the European sorbitol/maltitol market is Roquette Frères, with an estimated market share of 51%. A new supplier will enter the market this year — the Dutch company Amylum (production capacity: 50,000 tonnes/year). For glycerol, Unichema, Emmerich is the market leader, with an estimated market share of 25%.

The customers for sorbitol, maltitol and glycerol are mostly large multinationals in the food, pharmaceuticals and cosmetics industries.

Provisional assessment by the Commission

13. The Commission intends to adopt a positive decision with regard to the joint venture. Before a final decision is taken, however, interested third parties are invited to submit their views to the Commission within one month of the publication of this notice. Comments may be sent by fax (32-2) 299 24 64) or by post, quoting reference IV/E-2/36.949, to the following address:

European Commission,
Directorate-General for Competition (DG IV/E-2),
Rue de la Loi/Wetstraat 200,
B-1049 Brussels.